IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 2057 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVYESHBHAI NANJIBHAI VADUKAR & 2 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR HARESH N JOSHI for Applicant(s) : 1 - 3.
MR AY KOGJE, APP for Respondent(s) : 1,
MR PRAVIN GONDALIYA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/04/2007

ORAL JUDGMENT

1. This petition has been filed by the accused persons seeking transfer of the investigation of complaint bearing C.R. No.I-196/2006 dated 24th June, 2006, pending with Gandhigram Police station at Rajkot to the concerned police

station at Porbandar.

2. The petition arises out of following factual background :

2.1 Respondent no.2 is wife of petitioner no.1. Husband and wife along with other in-laws of the complainant i.e. petitioners nos.2 and 3 were residing at Ranavav in Porbandar District. There were matrimonial and other disputes. The complainant therefore, started residing with her parents at Rajkot. She lodged complaint on 24th June, 2006 bearing C.R. No.I-196/2006 before Gandhigram Police Station within the jurisdiction of Rajkot City. In the complaint, she made allegations of harassment and other related allegations against all the petitioners. While complaint was under investigation, the petitioners filed present petition contending inter-alia that the Gandhigram police station had no jurisdiction to entertain the complaint since no part of the offence alleged in the complaint was committed within the jurisdiction of the said police station. It is contended that respondent no.2 original complainant has lodged complaint before Gandhigram police station only to harass the petitioner and even as per the complaint the alleged ill treatment given to wife was committed while she was with her husband at Ranavav.

2.2 On these grounds, the petitioners requested for transfer of investigation of the pending complaint.

3. Learned advocate for the petitioners has placed heavy reliance on the decision of Apex Court in the case of **Y. Abraham Ajith & ors. v. Inspector of Police, Chennai & anr.** reported in 2004(8) SCC 100, wherein the Apex Court interpreting the provisions contained in Section 177 and 178 of Criminal Procedure Code, found that offences should ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. However, such a rule is subject to certain exceptions. But when no such exception is established, normal rule should not be deviated from.

4. On the other hand, learned advocate Shri Pravin Gondaliya for respondent no.2 opposed the petition and submitted that in the complaint there are allegations which would demonstrate that the petitioners had committed offences within the jurisdiction of Gandhigram police station also. He submitted that the offences alleged against the petitioners are continuing one and a continuous offence and part of the offence was committed within the local jurisdiction of Gandhigarm police station also.

5. Learned APP Shri Kogje submitted that the Court may pass appropriate order as found necessary in the interest of justice.

6. Having heard learned advocates appearing for the parties and having perused the material on record, I find that in the complaint filed by respondent no.2, no allegation is found which would demonstrate that any part of the offence was committed within jurisdiction of Gandhigram police station. She was subjected to mental and physical torture by the petitioners. Her in-laws used to excite their son saying that the complainant cannot bear children and that therefore, she should be divorced. All these incidents took place when the complainant was residing with her husband and in-laws at Ranavav. Only allegation on which learned advocate for the complainant has placed reliance is that about two and half months before the date of complaint, the petitioners brought the complainant to her parents house and told her parents that she may stay there for about eight days after which she will be taken back. Thereafter, after about four days, the petitioners again visited the house of the parents of the complainant and stated that they are not willing to take her back and that she should agree to divorce.

7. I find that the allegations made in the

complaint do not make out any offence having been committed within the Gandhigram police station. As noted earlier, the allegations pertaining to physical and mental cruelty are with respect to time when the complainant was residing with her husband at Ranavav.

8. In the result, following the ratio laid down in case of **Y. Abraham Ajith & ors. v. Inspector of Police, Chennai & anr.** , the complainant cannot be investigated and tried by the concerned poice station or tried by the competent Court at Rajkot. The complaint shall have to be transferred before the appropriate police station for investigation and for further trial, if need so arises in future.

9. In the result, this petition is allowed. The complaint bearing C.R. No.I-196/2006 dated 24th June, 2006, filed before Gandhigram Police station at Rajkot by respondent no.2 shall stand transferred to the concerned police station within Porbandar District within whose jurisdiction the petitioners were residing at the time when the complainant was allegedly harassed.

10. With these directions, the petition is allowed. Rule made absolute accordingly.

(Akil Kureshi,J.)

(raghu)